IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 399 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDRASING MEKSING RAJPUT BHATTI

Versus

DISTRICT MAGISTRATE BANASKANTHA

Appearance:

1. Special Civil Application No. 399 of 2002

MR PS GONDALIYA for Petitioner No. 1

MR SS PATEL, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/02/2002

ORAL JUDGEMENT

1. District Magistrate, Banaskantha, at Palanpur, passed an order on the 27th August, 2001, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said

Act.

2. The detaining authority took into consideration only one registered offence against the petitioner and statements of two anonymous witnesses verified on the 15th July, 2001 and branded him as a bootlegger. The detaining authority observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to a conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. Learned advocate for the petitioner, Mr. Gondaliya assails this order on the ground that though the statements of anonymous witnesses were verified on the 15th July, 2001, the order is passed only only the 27th August, 2001, i.e. after one and a half months. This delay in passing the order even after the verification of statements of witnesses has vitiated the impugned order of detention. He, therefore, urged that the petition may be allowed.

4. Mr. S.S. Patel, learned Assistant Government Pleader, has opposed this petition.

5. There is no dispute about the factual aspects. So far as the statements are concerned, thery were verified on 15.7.2001 and, that too by the Dy.S.P. and not the detaining authority. The order was passed on 27.8.2001, i.e. one an a half months after the verification. The delay in passing the order after verification of the statements of the witnesses has vitiated the subjective satisfaction recorded by the authority that in order to immediately prevent the petitioner from pursuing his illegall activities, he is required to be detained under the PASA Act. This petition, therefore, deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention dated the 27th August, 2001, passed against the detenu is hereby quashed and set aside. The detenu-Indrasing Meksing Rajput (Bhatti) is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

7. Direct service is permitted.

[A.L. DAVE, J.]

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